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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen;) CIVIL NO. CV03-00385 SOM-LEK
	) (Copyright)
Plaintiff,)
	) MEMORANDUM IN OPPOSITION
vs.	) TO PLAINTIFF WAYNE BERRY'S
	) MOTION TO ALTER OR AMEND
HAWAIIAN EXPRESS SERVICE,	) SECOND AMENDED JUDGMENT
INC., et al.,	) ENTERED ON MARCH 16, 2006
	) AND TO DELAY TIME FOR
Defendants.	) FILING AN APPEAL PENDING
	) RESOLUTION OF MOTION FOR
	) ATTORNEYS' FEES AND FULL

) **COSTS**

)

) Judge: Magistrate Leslie Kobayashi

) Trial Date: February 28, 2006

) Judgment Entered: March 9, 2006

) Non-Hearing

**MEMORANDUM IN OPPOSITION TO PLAINTIFF WAYNE
BERRY'S MOTION TO ALTER OR AMEND SECOND AMENDED
JUDGMENT ENTERED ON MARCH 16, 2006 AND TO DELAY
TIME FOR FILING AN APPEAL PENDING RESOLUTION OF
MOTION FOR ATTORNEYS' FEES AND FULL COSTS**

In his endless quest to harass Fleming and anyone who ever had any relationship with Fleming, the plaintiff now seeks a Judgment expressly naming Fleming's ex-employees were found not liable to the plaintiff for any amount.

The plaintiff's claim that such an amendment is required by Section 508 of the Copyright Act is unsupportable. Section 508(b) provides that:

Within one month after any final order or judgment is issued in the case, the clerk of the court shall notify the Register of it, sending with the notification a copy of the order or judgment together with the written opinion, if any, of the court.

The Clerk can fully satisfy this statute by forwarding the judgment that has already been entered. Nothing in Section 508 calls for a different result.

The legislative history confirms that the purpose of Section 508 is:

to establish a method for notifying the Copyright Office and the public of the filing and disposition of copyright cases. The clerks of the Federal courts are to notify the Copyright Office of the filing of any copyright actions and of their final disposition, and the Copyright Office is to make these notifications a part of its public records.

House Report 94-1476, Page 164 (Sept. 3, 1976). Again, the legislative purpose is fully satisfied by the judgment that has been entered. This statute provides no reason at all for the amendment the plaintiff is seeking.

In passing Section 508, the Congress was not seeking to facilitate the plaintiff's thirst to torment Fleming's ex-employees into the future. Because there is no legal basis for the amendment plaintiff has requested, the motion should be denied.

The instant motion – and the future harassment which it portends – confirms the need for the need for the Court to consider the individuals' motion for judgment as a matter of law. The Court's rulings recognize that as a corporation Fleming could only act through its employees. The inclusion of the individual employees in the public record of this case may haunt the individuals into the future on credit-applications, employment applications and other similar background checks. The Court's rulings

already recognize that corporations like Fleming can only act through their employees, and that the plaintiff is not entitled to a double recovery.

For the foregoing reasons, plaintiff's motion to alter or amend the judgment should be denied.

Dated: Honolulu, Hawaii, March 31, 2006

/s/ **Thomas H. Yee**

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